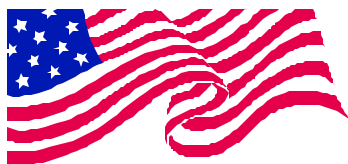




**U.S. DEPARTMENT OF STATE**  
**FREEDOM OF INFORMATION ACT**  
**ANNUAL REPORT**  
**FISCAL YEAR 2002**



## **I. Basic Information**

In compliance with the Electronic Freedom of Information Act Amendments of 1996, the Department of State submits the attached report on the Freedom of Information Act program. This report addresses the time period for the 2002 fiscal year (October 1, 2001 to September 30, 2002). Questions pertaining to this report may be addressed to:

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This report is available on our web site at <http://www.foia.state.gov>. Paper copies may be requested by contacting A/RPS/IPS at the above address.

## **II. How to Make A FOIA Request**

Freedom of Information Act requests must be made in writing and submitted by mail or fax (not e-mail) to the Office of Information Programs and Services (IPS) at the address indicated. Requesters must describe the records sought as clearly and precisely as possible, and state their willingness to pay applicable fees or provide justification to support a fee waiver. Requesters should clearly mark their request "Freedom of Information Act Request" and include a daytime telephone number at which they may be reached.

In order for a request to be processed, it must be "perfected." A request is deemed not perfected when unresolved issues exist, such as when the records sought have not been reasonably described or there are unresolved fee issues. IPS staff will notify the requester of any deficiencies of the request, and advise the requester how to perfect the request.

The Department will respond to requests within 20 working days of receipt, advising the requester of the date of receipt, the case number assigned to the request, and whether or not the records sought are under the Department's control. Whenever possible, the request will be processed within 20 working days. It is the Department's policy to release information to the maximum extent possible. However, if some information must be withheld, the requester will be notified of the amount of information withheld, the

basis for the withholding and the procedures for appealing the withholding. For more information on making a FOIA request, you may visit our web site at <http://www.foia.state.gov> or contact IPS at the address indicated.

### **III. Definitions of Terms and Acronyms Used in the Report**

#### **A. Agency-Specific Terms**

1. A/RPS/IPS -- Deputy Assistant Secretary for Records and Publishing Services, Office of Information Resources Management Programs and Services

#### **B. Basic Terms**

1. FOIA/PA request -- Freedom of Information Act/Privacy Act request. A FOIA request is generally a request for access to records concerning a third party, an organization, or a particular topic of interest. A Privacy Act request is a request for records concerning oneself; such requests are also treated as FOIA requests to afford maximum access. (All requests for access to records, regardless of which law is cited by the requester, are included in this report.)
2. Initial Request -- a request to a federal agency for access to records under the Freedom of Information Act.
3. Appeal -- a request to a federal agency asking that it review at a higher administrative level a full denial or partial denial of access to records under the Freedom of Information Act, or any other FOIA determination such as a matter pertaining to fees.
4. Processed Request or Appeal -- a request or appeal for which an agency has taken a final action on the request or the appeal in all respects.
5. Multi-track processing -- a system in which simple requests requiring relatively minimal review are placed in one processing track, and more voluminous and complex requests are placed in one or more other tracks. Requests in each track are processed on a first-in/first-out basis. A requester who has an urgent need for records may request expedited processing (see below).
6. Expedited Processing -- an agency will process a FOIA request on an expedited basis when a requester has shown an exceptional need or urgency for the records which warrants prioritization of his or her request over other requests that were made earlier.

7. Simple Request -- a FOIA request that an agency using multi-track processing places in its fastest (non-expedited) track based on the volume and/or simplicity of records requested.
8. Complex Request -- a FOIA request that an agency using multi-track processing places in a slower track based on the volume and/or complexity of records requested.
9. Grant -- an agency decision to disclose all records in full in response to a FOIA request.
10. Partial Grant -- an agency decision to disclose a record in part in response to a FOIA request, deleting information determined to be exempt under one or more of the FOIA's exemptions; or a decision to disclose some records in their entireties, but to withhold others in whole or in part.
11. Denial -- an agency decision not to release any part of a record or records in response to a FOIA request because all the information in the requested records is determined by the agency to be exempt under one or more of the FOIA's exemptions, or for some procedural reason (such as - no record is located in response to a FOIA request).
12. Time Limits -- the time period in the Freedom of Information Act for an agency to respond to a FOIA request (ordinarily 20 working days from proper receipt of a "perfected" FOIA request).
13. "Perfected" Request -- a FOIA request for records which adequately describes the records sought, which has been received by the FOIA office of the agency or agency component in possession of the records, and for which there is no remaining question about the payment of applicable fees.
14. Exemption 3 Statute -- a separate federal statute prohibiting the disclosure of a certain type of information and authorizing its withholding under FOIA subsection (b)(3).
15. Median Number -- the middle, not average, number. For example, of 3, 7, and 14, the median number is 7.
16. Average Number -- the number obtained by dividing the sum of a group of numbers by the quantity of numbers in the group. For example, of 3, 7, and 14 the average number is 8.

#### IV. Exemption 3 Statutes

Statute Cited	Description of Type of Information Withheld	Has Use of the Statute Been Upheld in Court?
8 USC 1202(f)	Protects records pertaining to the issuance or refusal of visas to enter the United States	<u>Medina-Hincapie v. U.S. Department of State</u>  Docket #82-1202 (D.C. Cir Feb 25, 1983)
10 USC 424	Protects organizational and personnel information for Defense Intelligence Agency, National Reconnaissance Office, and National Imagery and Mapping Agency	No
22 USC 2778	Protects information concerning arms export licensing cases	<u>Council for a Livable World v. U.S. Department of State</u>  Docket #96-1807 (D.D.C. Nov. 23,1998)
42 USC 2011	Protects records defining policy for the development, use and control of atomic and nuclear energy in private, peaceful and military matters	No
50 USC 403-3(c)(6)	Protects material regarding nature of agency functions; prohibits release of documents that would endanger the intelligence gathering process	<u>Agee v. CIA</u>  Docket #79-2788 (D.D.C. 11/3/82)
50 USC App. 2411 (c)(1)	Protects confidential information concerning the licensing procedure under the Export Administration Act	<u>Africa Fund v. Mosbacher</u>  Docket #92-289 (S.D.N.Y. 5/26/93)

## **V. Initial FOIA/PA Access Requests**

**N.B.** Statistics reported herein are based on data currently available and are accurate to the extent possible. However, not all data required to prepare this report are currently being collected in the Department's requests tracking system. For example, statistics for the medians (section VII) are based on the dates that acknowledgement letters were sent to requesters, and in some cases the dates that requests were received, not on the dates when the requests were perfected (and thus processable) or when expeditious processing was granted. An asterisk (as in section B. 4) indicates that data were not collected in a particular category and, therefore, no statistics are available. Lastly, the Department processes requests incrementally, i.e., segments of a case are processed as they become available. Requests in which there have been incremental releases, but which have not been processed to completion are not reflected in this report. Time is reported in calendar days.

### **A. Numbers of Initial Requests.**

1. Number of requests pending as of end of preceding fiscal year	<b><u>*6845</u></b>
2. Number of requests received during current fiscal year	<b><u>3134</u></b>
3. Number of requests processed during current fiscal year	<b><u>4636</u></b>
4. Number of requests pending as of end of current fiscal year	<b><u>5343</u></b>

\*Due to a change in the tracking of non-perfected/perfected requests, this number does not correspond to the number of cases pending in the 2001 Annual Report.

### **B. Disposition of Initial Requests.**

1. Number of total grants	<b><u>634</u></b>
2. Number of partial grants	<b><u>818</u></b>
3. Number of denials	<b><u>104</u></b>

a. Number of times each FOIA exemption used

Exemption 1	496
Exemption 2	49
Exemption 3	152
Exemption 4	51
Exemption 5	201
Exemption 6	324
Exemption 7 (A)	14
Exemption 7 (B)	3
Exemption 7 (C)	40
Exemption 7 (D)	15
Exemption 7 (E)	30
Exemption 7 (F)	11
Exemption 8	0
Exemption 9	0

4. Other reasons for nondisclosure (total)	<b><u>3080</u></b>
a. no records	963
b. referrals (This statistic reflects cases in which all documents were referred to another agency for response and cases in which the request itself should be directed to another agency.)	474
c. request withdrawn	31
d. fee-related reason*	0
e. records not reasonably described*	0
f. not a proper FOIA request for some other reason	21
g. not an agency record*	0
h. duplicate request	71
i. other (specify) (This statistic reflects requests which were not perfected.)	1520

\*Data not collected.

## **VI. Appeals of Initial Denials of FOIA/PA Requests**

### **A. Number of appeals**

1. Number of appeals received during fiscal year	<b><u>217</u></b>
2. Number of appeals processed during fiscal year	<b><u>184</u></b>

### **B. Disposition of Appeals**

1. Number completely upheld	<b><u>43</u></b>
2. Number partially reversed	<b><u>115</u></b>
3. Number completely reversed	<b><u>11</u></b>



a. Number of times each FOIA exemption used

Exemption 1	121
Exemption 2	4
Exemption 3	18
Exemption 4	7
Exemption 5	24
Exemption 6	32
Exemption 7 (A)	1
Exemption 7 (B)	0
Exemption 7 (C)	5
Exemption 7 (D)	2
Exemption 7 (E)	1
Exemption 7 (F)	0
Exemption 8	0
Exemption 9	0

4. Other reasons for nondisclosure (total)	<b><u>15</u></b>
a. no records	6
b. referrals	0
c. request withdrawn	5
d. fee-related reason	0
e. records not reasonably described	0
f. not a proper FOIA request for some other reason	0
g. not an agency record	0
h. duplicate request	0
i. other (specify)	<b><u>4</u></b>
1. processed through litigation	3
2. appeal not timely filed	1

## **VII. Compliance with Time Limits/Status of Pending Requests**

- A. In accordance with the amended FOIA, the Department has established multiple-tracks for processing Freedom of Information Act requests for the public so as to distinguish simple requests from complex requests. At this time, requests can be assigned to one of two tracks, the simple/fast track or the routine/complex track. Requests are assigned to a particular tracking queue contingent upon the level of effort required to complete the request, the number and location of searches/record sources, and the estimated volume of responsive records. It is often difficult to assign a case to an appropriate track during the initial processing stage of a request. Since the Department's search function is decentralized, the number and complexity of responsive documents and the amount of other agency concurrences are unknown until all searches are returned and the review of the documents has been completed. As a result, movement between tracks can become very fluid. A seemingly routine case can quickly become complex as searches are returned with voluminous documents. This type of case activity blurs the line between routine and complex cases. Thus, making it impossible to create a complex track under our current system.

In order to improve response times to new and pending requests and reduce the existing FOIA backlog, additional resources were allocated to the Department's Freedom of Information Act program. The additional resources target the following initiatives: 1) significantly reduce the current FOIA backlog over the next two years by hiring additional temporary staff; 2) prevent future backlogs of information requests by constructing a permanent FOIA workforce infrastructure to keep up with incoming workload; and 3) reduce the diversion of FOIA staff by constructing a permanent special project workforce infrastructure.

To accomplish these goals, workforce recruitment efforts have supplemented our existing staffing resources. Accomplishments have been made in each of the ongoing efforts. Firstly, nearly fifty additional retired Senior Foreign Service Officers from the State Department and the former U.S. Information Agency have been selected and will serve in a part time temporary capacity as reviewers. Secondly, additional staff has been specially recruited from universities in the Washington metropolitan area for the more time-consuming and labor-intensive support activities inherent to responding to FOIA requests and other document production demands. Thirdly, the Department's senior resource managers approved an additional 23 new full-time permanent positions and the allocation of an additional \$4 million from existing Department appropriations for a task force of civil service employees and contractors dedicated to a two-year project known as *Due Diligence* to address the existing FOIA backlog. The goal is to reduce the backlog by 40% each year over the next two years.

Median processing time for FOIA/PA requests processed during the year:

1. Simple Requests – “Fast Track”

a. number of requests processed	<b><u>1863</u></b>
b. median number of days to process	<b><u>351</u></b>

2. Routine/Complex Requests

a. number of requests processed	<b><u>2764</u></b>
b. median number of days to process	<b><u>431</u></b>

3. Requests Accorded Expedited Processing

- |                                     |            |
|-------------------------------------|------------|
| a. number of requests processed     | <u>9</u>   |
| b. median number of days to process | <u>255</u> |

B. Status of Pending Requests

- |  |             |
|--|-------------|
| 1. Number of FOIA/PA requests pending as of end of current fiscal year | <u>5343</u> |
| 2. Median number of days that such requests were pending               | <u>546</u>  |

**VIII. Comparisons with previous year(s) (Optional)**

	<u>FY 2001</u>	<u>FY2002</u>	<u>Percentage of Change</u>
A. Comparison of numbers of requests received	<b>3761</b>	<b>3134</b>	<b>16.67% decrease</b>
B. Comparison of numbers of requests processed	<b>3329</b>	<b>4636</b>	<b>39.28% increase</b>
C. Comparison of median number of days requests were pending as of end of fiscal year	<b>*542</b>	<b>546</b>	<b>.74% increase</b>

\*This figure does not correspond to the median number of days pending as reported in the 2001 FOIA Annual Report. As part of Due Diligence, cases are being systematically reviewed and re-evaluated resulting in some data elements being updated or corrected. As a result, this figure as calculated for the 2002 report, more accurately reflects last year's reporting period statistics.

D. Other statistics significant to Agency:

- |  |            |
|--|------------|
| 1. Number of requests for expedited processing     | <u>117</u> |
| 2. Number of requests granted expedited processing | <u>10</u>  |

E. Other Narrative Statements:

1. Training on Court Decision

In accordance with the January 25, 2002, decision by the U.S. Court of Appeals for the District of Columbia Circuit, the Department has established and implemented new cut-off dates for conducting searches for responsive documents to existing and new FOIA requests. The Department changed its standard operating procedures from using the date of the requester's letter as the cut-off date for searches and review of material to using the date that searches are initiated. Training sessions were provided to ensure that all Department FOIA and Privacy Act officers in the organization as well as those officers conducting decentralized searches were accurately informed on how to implement the new decision. In the coming year, the Department intends to provide quarterly training sessions to communicate updates to regulations, correct inconsistent practices and discuss other issues related to FOIA and Privacy Act requests.

2. Public Availability of New Categories of Records

As mandated by the 1996 amendments to the Freedom of Information Act (E-FOIA), IPS has established a web site on the Internet located at <http://www.foia.state.gov> in part to make new categories of records publicly available. Since its inception in March 1998, the site has developed into an information-rich direct source of State Department documents and information. The site encompasses a continuously growing collection of unique records of international significance, which have been made available to the public under the FOIA or as special collections. While the site averages 3,500 visitors per day, there is a huge increase in the visits to our website just subsequent to releases of special document collections of a large global interest, such as, the 750,000 hits seen on the first day that the Argentina collection was made available on our website. By proactively making declassified record collections available to the requesting public in our electronic reading room, we believe we have reduced the amount of direct FOIA cases received per year. This belief is supported by the 16% decrease in number of cases received this reporting period.

Special interest collections currently total over 100,000 pages in addition to a continually expanding FOIA library of previously released documents. The collections encompass human rights abuses in countries such as Guatemala from 1984 to 1995, Chile during the Pinochet era and Argentina from 1975 to 1984. Other topics include the murders of four U.S. churchwomen in El Salvador; the disappearance and investigation of Amelia Earhart; and the disappearance in Hungary of Swedish diplomat Raoul Wallenberg during World War II. A collection about the creation of the OSS and subsequent establishment of the modern-day CIA has also been added.

The site also provides a number of aids to help users understand the content of our records and how to access that information; how records are reviewed and processed for release; why some information may continue to be withheld; and what their appeal rights are. The search engine offers both standard and advanced search capabilities that include full text retrieval of the documents on the site. In addition, there are extensive links to other sites that are sources of State Department records or information. In general, IPS has applied technology to enhance performance and increase the level of satisfaction for our many customers, a customer base that is probably one of the most comprehensive in the Federal Government, including the general public, the White House, the Congress, other Federal agencies, the courts, academia, historians, journalists, attorneys, private interest groups, and the Department's offices and overseas posts.

## **IX. Costs/FOIA Staffing**

Data provided in this section reflect only costs and staffing for the Office of Information Programs and Services (IPS), the Department's central office for processing FOIA/PA requests. We are unable at this time to capture data for decentralized offices or for personnel outside of the Office of Information Programs and Services who have FOIA/PA duties.

### **A. Staffing levels**

1. Number of full-time FOIA/PA personnel	121
2. Number of personnel with part-time or occasional FOIA/PA duties (in work-years)	37
3. Total number of personnel (in work-years)	<b><u>158*</u></b>

### **B. Totals Costs (including staff and all resources) (estimates)**

1. FOIA/PA processing (including appeals)	\$13,904,439
2. Litigation-related activities	\$91,396
3. Total costs	<b><u>\$13,995,835*</u></b>

\*These figures represent the total annual resource allotment for the Office of Information Programs and Services (IPS). IPS is the office within the Department of State which has program responsibility for several statutory and information management functions in

addition to FOIA and Privacy Act implementation. IPS has Department-wide program responsibilities for records management and archiving of State Department central foreign policy files, E.O. 12958 on classification/declassification of national security information, and special document production requests from the President, Congress, or the courts. In addition to staff costs, other resources covered by the figure are several information technology systems that concurrently support multiple functions. These include an on-line 28 million record archive of electronic diplomatic communications, a case tracking/imaging/electronic redaction system which supports information access case processing, and several Internet and Intranet websites. As these resources support many interrelated functions, it is impossible to extrapolate that portion of the costs devoted exclusively to FOIA and Privacy Act case processing.

**C. Statement of Additional Resources Needed for FOIA/PA Compliance**

The Department was granted funds to establish a backlog reduction project team and to put a permanent workforce in place for special projects. This made additional full-time-employee staff available to devote to the FOIA program. If efforts continue to be staffed and funded, the Department will successfully decrease the backlog and maintain a more reasonable FOIA response time.

**X. Fees**

- A. Total amount of fees collected for processing requests **\$ 18,889.39**
- B. Percentage of total costs **.13%**

**XI. FOIA Regulations**

The Department's FOIA regulations are located at 22 CFR 171. These can be found directly at the Government Printing Office's (GPO) website at <http://www.gpo.gov/nara/cfr/index.html> or from links at website at <http://foia.state.gov>.

The Department's search and review fees are assessed at the following rates:

Administrative/Clerical  (GS-1 through GS-8; or FS-9 through FS-6)	\$8.00/hour
Professional  (GS-9 through GS-13; or FS-5 through FS-3)	\$17.00/hour
Executive  (GS-14 and above; or FS-2 and above)	\$30.00/hour

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